

No. 151.

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Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 151.

GEORGE SCHEURMAN, D. E. DUMAS and

J. R. BEATSON,

Appellants,

v.s.

THE TERRITORY OF ARIZONA.

BRIEF FOR APPELLEE, THE TERRITORY OF ARIZONA.

C. F. AINSWORTH,

Attorney General of Arizona.



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GEORGE SCHEURMAN, D. E.

DUMAS AND J. R. BEATSON,

Appellants,

VS.

TERRITORY OF ARIZONA.

BRIEF FOR APPELLEE, THE TERRITORY OF ARIZONA.

STATEMENT OF THE CASE.

This is an appeal from the judgment of the Supreme Court of the Territory of Arizona affirming a judgment of the District Court of the Fourth Judicial District of Arizona in an action of mandamus brought by the appellee, the Territory of Arizona, against the appellants, who constitute the Board of Supervisors of Yavapai county, for the purpose of compelling them as such board to levy a tax of thirty-two (32) cents on each one hundred (\$100) dollars of

valuation of taxable property in said county of Yavapai for the purpose of paying to the Territory the interest on certain Territorial funding bonds issued by the Territory of Arizona, in lieu of certain bonds known as the P. and A. C. Railroad Bonds, theretofore issued by Yavapai county, the interest on said funding bonds having matured in the years 1898 and 1899 and been paid by the Territory to the owners of said funding bonds; also to compel the appellants as a board to levy a further tax of thirty-seven (37) cents on each one hundred (\$100) dollars of valuation of said county of Yavapai for the purpose of paying the interest on said funding bonds aforesaid, maturing in the year 1900, said taxes having been duly levied by the Territorial Board of Equalization of the Territory of Arizona and by it duly certified to the county Board of Supervisors for said county of Yavapai, for the purpose of having the same entered upon the tax roll of said county and collected as the taxes for said county are collected.

The case was tried by the District Court on an agreed statement of facts, which are substantially embodied in the statement of facts found by the Supreme Court of Arizona. (Record pages 9, 10 and 11.)

"FINDINGS OF FACT.

"The Court finds that the statement of facts filed in this case is substantially true and correct and is hereby adopted as the findings of fact in this case, *and further the Court finds that all the material allegations of the complaint are true.*"

"CONCLUSIONS OF LAW.

"As conclusions of law, the Court finds that those certain two hundred and fifty-eight railroad subsidy bonds issued by the county of Yavapai in aid of the construction of the railroad known as the Prescott and Arizona Central railroad, extending from Seligman, Arizona, to Prescott, Arizona, were on the 17th day of September, 1897, valid, subsisting obligations of the county of Yavapai, Territory of Arizona.

"That the action of the loan commission of the Territory of Arizona in funding said obligations and in issuing Territorial funding bonds in lieu thereof, was in all respects authorized and legal.

"That said bonds as funded by said loan commission of the Territory of Arizona are valid and legal obligations of the county of Yavapai, and the said county of Yavapai is liable for the same and for all the interest accruing on said bonds to be paid by taxation of all taxable property in said county of Yavapai to be levied and assessed by the board of supervisors acting as a board of equalization for said county, to be collected in the same manner as other taxes are collected, and by the treasurer of said county of Yavapai to be paid over to the Territorial treasurer.

"That the sum of 32 cents on each one hundred dollars of valuation of the county of Yavapai being necessary to meet the accruing interest on the aforesaid bonds for the year 1898, and the sum of 31 cents for each one hundred dollars of valuation of the county of Yavapai being necessary to meet the accrued interest in the bonds aforesaid by taxation for the year 1899, the Court finds that the defendants herein are legally bound to levy and assess the said sum on all the taxable property in Yavapai county."

Final judgment having been rendered in accordance with these findings for the plaintiff, the Territory of Arizona, (Record page 13) the defendants, Scheurman, Dumas and Beatson, appealed to the Supreme Court of the Territory of Arizona. (Record pages 21 and 22.)

That court affirmed the judgment of the court below, rendering the following opinion:

The appellants constitute the board of supervisors of Yavapai county. The Territory, by Charles F. Ainsworth, its attorney general, on the second day of September, 1899, obtained from the District Court an alternative writ of mandamus against the defendants, members of said board, requiring them to levy and assess upon the taxable property of the county of Yavapai the sum of thirty-two cents on each one hundred dollars of valuation for the years 1898 and 1899, and the sum of thirty-seven cents on each one hundred dollars of valuation for the year 1900, for the purpose of paying interest on two hundred and fifty-eight Territorial funding bonds of the denomination of one thousand dollars each, issued by the Territorial loan commission on the seventeenth day of September, 1897.

Upon the return of the writ and the filing of defendants' answer a statement of facts was submitted; which statement of facts the Court adopted as its findings; and as a result arising from the conclusions of law and the findings of fact judgment was rendered for the plaintiff, and defendants were required to make such levy for the years 1898, 1899 and 1900. The defendants appeal and present to this court three questions for consideration:

"First. Were said bonds legally funded, with-

out any demand from the board of supervisors of Yavapai county upon the Territorial loan commission for such funding?

"Second. Could said bonds be legally funded after January 1, 1897?

"Third. Were said bonds legally funded at a meeting of said board of loan commissioners of the Territory of Arizona, at a meeting at which only two members of said board were present, the third member being absent from the Territory and not in any manner consulted with reference to such finding?"

The history of these bonds is fully set out in former decisions of this Court, to-wit:

Gage vs. McCord, Governor, et al.,

51 Pac. Rep. 977;

Coconino County vs. Yavapai County,

52 Pac. Rep. 1127;

Yavapai County vs. McCord, et al.,

59 Pac. Rep. 99.

The first and second questions presented for our view in this case were therein discussed and settled; as also in the case of Bravin vs. City of Tombstone, another Territorial funding bond case, reported in the 56 Pac. Rep. 719.

The district attorney for Yavapai county gracefully admitted the binding force of these decisions, but invited the Court's attention again to the questions, because of the grave results embodied in their resolution. The discussion of those questions in his brief is full and explicit, but a study of it does not enable this court to change its views upon the questions referred to. In those cases this court held that the bonds were valid; that they were regularly issued; that a demand from the holders of the bonds

was sufficient, without a demand from the municipal authorities. We also held that the limit of January 1, 1897, mentioned in the act permitting the refunding of bonds, was intended to be restrictive only of the indebtedness which could be funded, and made the act applicable to such obligations as existed and were outstanding prior to that time; but that it did not terminate on that day the authority of the Territorial officers to fund said obligations.

The third question, "Were said bonds legally funded at a meeting of said board of loan commissioners of the Territory of Arizona, at a meeting at which only two members of said board were present, the third member being absent from the Territory, and not in any manner consulted with reference to such funding," is answered by our statute (Par. 2932, Subdivision 2): "All words purporting to give a joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."

The case cited by appellant (*People vs. Coghill*, 47 Cal. 361), in which it was held that two members of the board of commissioners were not legally empowered to act, in the absence of the third, is not in point; for it was the provision of that act that "the board of supervisors to whom the report shall be made, shall appoint three commissioners, who shall jointly view and assess upon each and every acre to be reclaimed or benefited thereby," etc. There is no provision in the funding act of 1887, as amended by congress in 1890, that the commissioners should jointly act, but the board was treated as a unit. The funding act is not strictly a congressional act; it is a

Territorial act, passed by the legislature of the Territory and embodied in the Revised Statutes of 1887. For the purpose of assuring the validity of the act, and of placing any issuance of bonds under it beyond dispute, the act was presented to congress for its affirmative approval, which it gave with some few amendments, generally verbal in their nature and evidently for the purpose of making the act more specific. The title of the act passed by congress clearly carries out that view, for the first provision of that act is, "that the act of the Revised Statutes of Arizona of 1887, known as Title XXXI, 'funding', be and is hereby amended so as to read as follows; and that as amended the same is hereby approved and confirmed, subject to future Territorial legislation." The act being a Territorial act, and the commission being the creation of the Territory, is directly affected by Par. 2932, *supra*.

The judgment of the District Court is affirmed.

(Signed) WEBSTER STREET, C. J.

We concur.

GEO. R. DAVIS, A. J.

FLETCHER M. DOAN, A. J.

The Supreme Court of the Territory made the following

STATEMENT OF FACTS.

The above-entitled cause having been duly argued and submitted to this court at the January, 1900, term thereof, and the judgment appealed from having been on the 28th day of March, 1900, in all things affirmed by this court and a motion for a rehearing having been filed by the appellants and the same having been overruled, and the appellants de-

siring to prosecute an appeal to the Supreme Court of the United States from the judgment of this court in this case and having applied for a statement of the facts of the case in the nature of a special verdict pursuant to the act of congress in such case made and provided :

Now, therefore, this court does now on this 2nd day of June, 1900, the same being a day of the January, 1900, term of said court, in open court make and file the following statement of the facts of this case in the nature of a special verdict and statement of facts, to-wit :

1. The appellants, George Schuerman, D. E. Dumas and J. R. Beatson, hereinafter called the defendants, are and were at the time of the commencement of this action the duly elected, qualified and acting supervisors of the county of Yavapai in the Territory of Arizona.

2. Prior to the 17th day of September, 1897, there existed certain bonds issued by said county of Yavapai, known as the P. & A. C. railroad bonds, upon which there was due, according to the terms of said bonds, at the date last mentioned the sum of \$260,218.80; said bonds had been issued and were outstanding about the year 1890 and long prior to the first day of January, 1897.

3. On the 18th day of November, 1896, the board of supervisors of said Yavapai county requested the board of loan commissioners to fund said bonds, and thereafter and on the 5th day of December, 1896, said board of supervisors duly rescinded their action requesting the funding of said bonds, a certified copy of the resolution of said board of supervisors rescinding said request being transmitted to

and received by said board of loan commissioners prior to the 17th day of September, 1897.

4. After the 1st day of January, 1897, the said bonds were presented by the holders thereof to the said board of loan commissioners for funding and on the 17th day of September, 1897, the said board of loan commissioners (only two of its members being present as hereinafter stated) met at the city of Phoenix and funded said bonds issued by said Yavapai county at the request and demand of the holders of said bonds, by exchanging therefor 258 Territorial funding bonds of said Territory, each of the denomination of \$1,000, and bearing interest at the rate of five per cent per annum, interest payable semi-annually, on the 15th days of January and July of each year thereafter until paid; the said board of loan commissioners also paid out in cash the sum of \$2,218.80 for the purpose of funding said bonds.

5. At the meeting of said board of loan commissioners at which said bonds were funded, only two members of said board were present or acted; the third member of said board of loan commissioners was at the time of said meeting absent from the Territory of Arizona and took no part in the funding of said bonds, and was not in any manner consulted with relation thereto.

6. On January 15th, 1898, there became due and payable as interest on the 258 Territorial funding bonds issued in exchange for the bonds of said Yavapai county as aforesaid, the sum of \$4,288.33 according to the tenor of said Territorial funding bonds, and thereafter on the 15th day of July and January of each year there became due and payable as interest on said Territorial funding bonds, according to the tenor thereof, the sum of \$6,450.00, payable at the

office of the Territorial treasurer of the Territory of Arizona.

7. In compliance with the terms and conditions of said Territorial funding bonds, the Territorial treasurer of said Territory of Arizona has paid all the interest thereon at the times when the same became due and payable, amounting in all, at the date hereof, to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds to that amount.

8. For the year 1898 the Territorial board of equalization of said Territory of Arizona, at its regular annual session for that year, levied the sum of thirty-nine cents on each one hundred dollars valuation of the taxable property of said Yavapai county, for the purpose of paying the interest on the funded indebtedness of said Yavapai county, including the funding bonds hereinbefore mentioned, and the Territorial auditor of said Territory duly certified the levy of said tax to the board of supervisors of said Yavapai county; that said board of supervisors failed and neglected to levy said tax of thirty-nine cents and include the same in the tax roll for that year, but only levied the sum of seven cents on each hundred dollars of valuation of said county for the purpose of paying the interest on the funded indebtedness of said county; that said sum of seven cents on the hundred dollars was sufficient to pay the interest on the funded indebtedness of said county other than the said funding bonds issued in lieu of said P. & A. C. railroad bonds, but was not sufficient to pay any part of the interest on said last-mentioned Territorial funding bonds.

9. Save as aforesaid, no demand was ever made by the board of supervisors of said Yavapai county

for the funding of said P. & A. C. railroad bonds, and no notice was ever given to said board of supervisors at or about the time of the funding that said bonds had been funded.

10. For the year 1899 the Territorial board of equalization of said Territory at its annual session for that year, levied the sum of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said Yavapai county, for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the Territorial funding bonds aforesaid, maturing in the year 1900, and the Territorial auditor duly certified the levy of said tax to the board of supervisors of said Yavapai county; that the defendants, comprising the board of supervisors of said county, failed and neglected to levy said tax of thirty-seven cents on the hundred dollars for the purpose of paying interest on the funded indebtedness of said county; said sum of six cents on the hundred dollars was sufficient to pay the interest on all the funded indebtedness of said county other than the Territorial funding bonds issued in lieu of said P. & A. C. railroad bonds as aforesaid, but was insufficient to pay the interest on said Territorial funding bonds or any part thereof.

11. The above-mentioned P. & A. C. railroad bonds were originally issued by the county of Yavapai in aid of the construction of the Prescott & Arizona Central railroad, a line of railway running from Prescott Junction or Seligman to Prescott, Arizona, and were granted and issued as a subsidy to the corporation building and owning said railroad.

12. That prior to the institution of this suit demand was made by the Territorial auditor, representing the Territory of Arizona, of the board of

supervisors of Yavapai county to levy the tax assessment as set forth in the complaint, and said board of supervisors, the defendants herein, declined and refused to make said levy.

13. That said sum of thirty-nine cents on each hundred dollars of valuation of said county of Yavapai for the year 1898 was necessary to be levied in order to pay the amount of interest due on said bonds for said year, and that the said sum of thirty-seven cents on each one hundred dollars of valuation of said county was necessary to be levied in order to pay the interest due on said bonds for the year 1899.

14. That the amount in dispute in this action exclusive of interest and costs is the sum of \$23,638.38.

Done in open court this 2nd day of June, 1900.

By the Court.

(Signed)

WEBSTER STREET,

Chief Justice of the Supreme Court
of the Territory of Arizona.

In the court below appellant filed twelve assignments of error (Record 35 and 36). In their brief here they rely upon but three errors, as follows:

First. That the bonds in question were illegally funded without a demand having been first made by Yavapai county on the Territorial loan commission.

Second. That said bonds were funded after January 1st, 1897, and after the authority of the loan commission to fund had expired.

Third. That the bonds in question were ille-

gally funded at a meeting of the board of loan commissioners, at which only two of the three members were present, the third member being at the time absent from the Territory of Arizona, and not consulted in relation thereto. (Record page 30, Statement of Facts.)

ARGUMENT.

I.

The bonds in question were legally funded, notwithstanding the same were funded by the loan commission of the Territory without a demand being made therefor by the county of Yavapai.

It is expressly found in the statement of facts in both the District and Supreme Courts that the holders of the P. & A. C. railroad bonds, issued by Yavapai county, presented them to the loan commission of the Territory of Arizona for funding and that they were by said loan commission on September 17th, 1897, on such request and demand by the holders thereof, funded by exchanging therefor 258 Territorial funding bonds of said Territory, each of the denomination of \$100 each and bearing interest at five per cent per annum, interest payable semi-annually. (Record pages 29 and 30, subdivision 4.)

The complaint in paragraph 3 (Record page 1) alleges that on said 17th day of September, 1897, the loan commission of the Territory of Arizona upon the request of the owners of said railroad subsidy bonds aforesaid duly and legally funded said railroad subsidy bonds, etc.

The finding of fact that there was a demand by

the owners of outstanding bonds of the county of Yavapai, to the Territorial loan commission, to have the same funded, is by the repeated decisions of this court, conclusive on this question.

Harrison vs. Perea, 168 U. S. 311.

Halloway vs. Dunham, 170 U. S. 615.

Young vs. Amy, 171 U. S. 179.

A demand having been made upon the loan commission of the Territory, by the owners of the P. & A. C. railroad bonds theretofore issued by Yavapai county, to have the same funded by exchanging the same for Territorial funding bonds, it therefore became and was the duty of the loan commission to make such exchange, the same being expressly authorized by Section 7, Territorial funding act of Arizona, approved March 19th, 1891, and act of congress approved June 6th, 1896.

Sec. 7. Any person holding bonds, warrants or other evidence of indebtedness of the Territory, or any county, municipality or school district within the Territory, existing and outstanding on the 31st day of December, 1890, may exchange the same for the bonds issued under the provisions of this act at not less than their face or par value and the accrued interest at the time of exchange; but no indebtedness shall be redeemed at more than its face value and any interest that may be due thereon.

"An Act amending and extending the provisions of an Act of Congress, entitled 'An Act approving with amendments the funding Act of Arizona,' approved June 25, 1890, and the act amendatory thereof and supplemental thereto, approved August 3, 1894.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the provisions of the Acts of Congress approved June 25th, 1890, and August 3rd, 1894, authorizing the funding of certain indebtedness of the Territory of Arizona, are hereby amended and extended so as to authorize the funding of all outstanding obligations of said Territory, and the counties, municipalities and school districts thereof, as provided in the Act of Congress approved June 25th, 1890, until January 1st, 1897, and all outstanding bonds, warrants and other evidences of indebtedness of the Territory of Arizona, and the counties, municipalities and school districts thereof, heretofore authorized by legislative enactments of said Territory bearing a higher rate of interest than is authorized by the aforesaid funding act approved June 25th, 1890, and which said bonds, warrants and other evidences of indebtedness have been sold or exchanged in good faith in compliance with the terms of the acts of the legislature by which they were authorized, shall be funded with the interest thereon which has accrued and may accrue until funded into the lower interest-bearing bonds as provided by this act.

"Sec. 2. That all bonds and other evidences of indebtedness heretofore funded by the loan commission of Arizona under the provisions of the Act of Congress approved June 25th, 1890, and the act amendatory thereof and supplemental thereto approved August 3rd, 1894, are hereby declared to be valid and legal for the purposes for which they were issued and funded; and all bonds and other evidences of indebtedness heretofore issued under the authority of the legislature of said Territory as hereinbefore authorized to be funded are hereby confirmed.

approved and validated, and may be funded as in this act provided until January 1st, 1897; Provided, That nothing in this act shall be so construed as to make the government of the United States liable or responsible for the payment of any of said bonds, warrants or other evidences of indebtedness by this act approved, confirmed and made valid, and authorized to be funded.

"Approved June 6, 1896."

This court and the Supreme Court of the Territory of Arizona have expressly ruled that the above acts made it mandatory on the loan commission to make the exchange of bonds upon the demand of the owners thereof "without an official demand by the municipal authorities for such funding."

This court, in passing on this very question, used the following language:

"It is true that by the tenth section of the Act of Congress of June 25th, 1890, the loan commissioners were authorized to refund municipal bonds 'upon the official demand of said authorities' of the municipality, but there is no limitation of that kind in Section 7 of the Territorial funding act of March 19th, 1891, which declares that any person holding bonds, etc., may exchange the same for the bonds issued under the provisions of this act at not less than their face or par value and the accrued interest at the time of the exchange.' In addition to this, however, the Act of Congress of June 6th, 1896, declared that all the outstanding bonds, warrants, and other evidences of indebtedness of the Territory and its municipalities *shall* be funded with interest thereon, etc. We are therefore of the opinion that it was

made the duty of the loan commission by these acts to fund the bonds in question."

Utter vs. Franklin, 172 U. S. 416 on 425.

Bravin vs. Mayor, Etc., of City of Tombstone, 56 Pacific Reporter 719.

Yavapai County vs. McCord, 59 Pacific Reporter 99.

II.

Did the Act of Congress of June 6, 1896, limit the time within which the bonds in question could be funded to January 1st, 1897, or was this date merely a limit for creating an indebtedness which could be funded?

In construing this act and particularly the phrase therein contained, "until January 1st, 1897," we submit that the court should be governed by the following familiar rules of construction, viz.: that statutes are to be interpreted according to the intention of the law makers, as ascertained not only from the language of a part, but from the language of all the acts in *puri materia*, even though such construction may seem contrary to the letter of the statute.

The rule by thumb that the plain literal meaning of a word or phrase should govern in interpreting statutes is subordinate to the more fundamental rule that the object of the court is to discover the real meaning and intent of the legislative body.

In order to discover this meaning it is proper to consider the act as a whole, together with all other acts in *puri materia*. The conditions existing at the time the act in question was passed and the surround-

ing circumstances may also be taken into consideration in determining its meaning. If then, after a careful examination, it is found that the plain literal meaning of the word or phrase would violate the manifest intent of the legislative body, such word or phrase may be interpreted as having such other import, consonant with reason, which will coincide with the true meaning and intent of such legislative body.

In *Holmes vs. Carley*, 31 N. Y., 289, the court in passing upon this question uses the following language: "It is an established rule of the courts in giving construction to a statute, first, to ascertain its intent. This may be determined not only from the language of a part, but from the language of the whole and every part of a statute; and the real intention, when accurately ascertained, will always prevail over the literal sense. The intention of the lawmaker is sometimes to be collected from the cause or necessity of making the statute; and however the intention may be ascertained, it should be followed with reason and discretion, though such construction may seem contrary to the letter of the statute, for it is the intent which often gives meaning to words otherwise obscure and doubtful. A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter and a thing which is within the letter of the statute is not within the statute unless it is with the intention of the makers."

Again, it is said in *Gay vs. Seibold*, 97 N. Y., 472, on page 477: "It is not the words of the law but

the internal sense of it that makes the law, and our law, like all others, consists of two parts, viz., of body and soul; the letter of the law is the body of the law; *quia ration legis est anima legis.*"

In *State vs. Gerhardt* (Ind.) 33 Law. Rep. Annotated, 313, on page 323, the court in passing upon this question uses the following language: "The legislature is presumed to have had former statutes before it and to have been acquainted with their judicial construction and passed new statutes on the same subject with reference thereto.

Steele vs. Lineberger, 72 Pa., 241.

When a number of statutes, whenever passed, relate to the same thing or general subject matter, they are to be construed together and are *in pari materia*.

U. S. vs. Freeman, 44 U. S., 3rd Howard, 556-564.

Ferguson vs. Monroe Co. (Supervisors), 71 Miss., 524.

Lynton's appeal, 104 Pa., 228.

In order to arrive at a proper construction of this Act, we deem it essential that the court should have before it the various funding acts of the Territory to which this particular act was passed as an amendment. We therefore print, as an appendix to this brief, these acts, together with the Territorial Memorial presented to Congress, which induced Congress to pass the Act of June 6, 1896. See appendix:

Page 34. Territorial Funding Act, approved March 10, 1887.

Page 41, Act of Congress, approved June 25, 1890.

Page 51, Territorial Funding Act of Arizona, approved March 19, 1891.

Page 56, Act of Congress, approved August 3, 1894.

Page 57, Territorial Memorial to Congress, approved June 6, 1896.

Act of Congress, approved June 6, 1896, page 14 herein.

With these rules in mind we will consider the construction to be placed upon the Act of Congress approved June 6, 1896.

The contention on the part of the appellants in this action is that the words "until January 1, 1897" mean that the loan commissioners were limited to the funding of any indebtedness whatsoever of the Territory of Arizona, whether it be Territorial debt or the debt of any municipality thereof to the first day of January, 1897, no matter when said debt was created or what rate of interest it bore. It must be, according to the appellants' construction, funded prior to January 1, 1897, or not at all.

The Funding Act of the Territory of Arizona, approved March 10, 1887, only authorized the loan commissioners, which were therein named as the Governor, Secretary of the Territory and Territorial Auditor, constituting such board of loan commissioners, to fund Territorial obligations. In other words, they were authorized to issue negotiable bonds of the Territory for the payment of existing

Territorial indebtedness, due and to become due, and for the purpose of paying, redeeming and refunding all or any part of the principal and interest, or either, of the existing or subsisting Territorial legal indebtedness. This law apparently had no bearing whatever upon the indebtedness of cities, towns or counties. In this condition of affairs Congress, on June 25, 1890, passed an act entitled "An Act Approving, With Amendments, the Funding Act of Arizona," above mentioned. By this later act it was expressly provided that the board of loan commissioners should be authorized to sell the negotiable bonds of the Territory for the purpose of not only paying off Territorial indebtedness, but for the purpose of paying off the outstanding indebtedness of cities, towns and counties as well, where such indebtedness bore a higher rate of interest than 5 per cent. This Act also authorized the loan commissioners to exchange bonds with the counties, municipalities and school authorities, taking up their respective indebtedness and issuing to the towns, counties and school districts the funding bonds of the Territory. This Act also provided that nothing therein contained should authorize any future increase of any indebtedness in excess of the limit prescribed by the Harrison Act; provided, however, that the then existing and outstanding indebtedness, together with such warrants as might be issued for the necessary and current expenses of carrying on Territorial, county, municipal and school government for the year ending December 31, 1890, could also be funded and bonds issued

for the redemption thereof, but that thereafter, viz., after December 31, 1890, no warrants, certificates or other evidence of indebtedness should be allowed to be issued or be legal where the same was in excess of the limit prescribed by the Harrison Act. It will be borne in mind that this Act was passed and approved by Congress on June 5, 1890. This Act, however, placed no limit whatever upon the time when the board of loan commissioners should act. The only limit in this Act provided was as to the date when the indebtedness was created. It extended the time for creating the indebtedness beyond the time when the Act was passed to December 31, 1890, the Act being passed, as above stated, on June 25, 1890. This Act was passed by Congress and expressly specified upon the face thereof that it was subject to future territorial legislation; that in pursuance of this Act the Territorial legislature passed the Act of March 19, 1891. This Act contains substantially the same provisions as contained in the Act of Congress, with the addition, however, that by section 7 thereof it was expressly provided that any person holding bonds, warrants or other evidence of indebtedness of the Territory, of any county, municipality or school district within the Territory, existing or outstanding on the 31st day of December, could exchange the same for bonds issued under the provisions of that Act at not less than their face or par value and accrued interest at the time of the exchange, provided that no indebtedness should be redeemed at more than its face value and any interest

that might be due thereon; that subsequent to the passage of this Act by the Territorial legislature Congress passed an act, approved August 3, 1894, by which it extended the time for the creation of debts of the Territory from December 31, 1890, to December 31, 1895, over one year beyond the date of the passage of the Act. And on June 6, Congress passed the further act, which is commonly known as the Funding and Curative Act. This Act, as was said before, was passed in pursuance of a memorial presented to Congress by the Territorial legislature, and is entitled "An Act Amending and Extending the Provisions of an Act of Congress, entitled 'An Act Approving, With Amendments, the Funding Act of Arizona, Approved June 25, 1890, and the Act Amendatory Thereof and Supplemental Thereto, Approved August 3, 1894.' " In the first section of this Act Congress expressly declares that the acts above mentioned are hereby amended and extended so as to authorize the funding of all outstanding obligations of said Territory and the counties, municipalities and school districts thereof, as provided in the Act of Congress approved June 25, 1890, until January 1, 1897, and all outstanding bonds, warrants and other evidence of indebtedness of the Territory of Arizona, the counties, municipalities and school districts thereof, heretofore authorized by legislative enactment of said Territory, bearing a higher rate of interest than is authorized by the aforesaid Funding Act approved June 25, 1890.

It seems to us that Congress had in view but two

propositions: One was to validate those certain railroad bonds that were mentioned and described in the legislative memorial to Congress, and the other was to extend the time for the creation by the Territory, counties, municipalities and school districts of indebtedness that could be funded into Territorial funding bonds. Any other construction to be placed upon this statute would mean that Congress, when it said that it was to extend the time for funding obligations meant, not to extend, but to curtail the time, for, as the law unquestionably stood until this act of Congress of June 6, 1896, there was no limit whatever placed upon the time for the board of loan commissioners to act upon the funding of the indebtedness of the Territory, its counties, municipalities or school districts; that the only limit whatever that was placed upon them was the limit of time as to when the debts which they were called upon to fund were created, and in each event Congress, in passing the several acts above referred to, placed the extension of this time far beyond the time when the law which they were then passing went into effect.⁹

When, by the act of June 6, 1896 Congress validated these outstanding obligations, which had been decided by this court to be invalid, it by that act made these bonds valid for their face and interest at the rate mentioned in said bonds, viz., 7 per cent per annum. Why should Congress then say that unless the owners and holders of those bonds or the county authorities should, within the short period of six months, viz., before January 1, 1897, present these bonds to the loan commission to be funded? That

these several counties should continue to pay the rate of interest at 7 per cent per annum until said bonds should mature, in place of authorizing them to be placed on the same identical footing that other obligations of the counties, municipalities and school districts were placed under the former acts? Construing these statutes together and observing the purpose for which they were evidently passed, it seems to us that Congress intended and meant by the language above quoted to limit the time to which the indebtedness to be funded could be created, but not to terminate on that date the authority of the Territorial officers to fund such obligations. This is the construction that has been placed on these various acts by various decisions of the supreme court of the Territory.

In *Gage vs. McCord*, 51 Pac. 977, the supreme court used the following language: "We therefore read section 1 of this Act as authorizing the funding of all obligations of the Territory which existed and were outstanding prior to January 1, 1897, and not as limiting the sale and disposition of bonds for funding purposes by the loan commissioners to the absurdly short period of six months. It is not to be assumed that Congress would in one breath grant liberal and generous concessions and in the next breath take away their practical benefits by the imposition of a seemingly unreasonable and unnecessary restriction, and thus defeat its own purpose and intent."

In *Utter vs. Franklin*, 172 U. S. 416, this court decides on January 3, 1899, that a mandamus should

issue to the loan commissioners, compelling them to issue funding bonds to the owners of certain Pima county bonds, in exchange therefor, in accordance with the provisions of the Act of Congress of June 6, 1896. It hardly seems probable that this court would have ordered the mandamus to issue were the court to place the limitation on the act aforesaid of the loan commissioners as terminating on January 1, 1897. While it is true that a suit, in whatever court pending, is to be determined in accordance with the rights of the parties at the time the action was commenced, nevertheless, it seems to us that this court must have recognized the fact that in rendering the decision in the Utter case, that the limitation mentioned in the Act of Congress of June 6, 1896, had reference only to the time when the indebtedness should be created, and not to the time when the loan commissioners should fund the same.

Blevin vs. Mayer, etc., etc., of Tombstone, 56 Pacific R. 719.

Yavapai County vs. McCord, 59 Pacific R. 99.

III.

We come then to a consideration of the last question raised by appellants, were said bonds legally funded at a meeting of the board of loan commissioners at which only two members of the board were present, the third being absent from the Territory?

As to this we present the following three propositions for consideration:

1. By direct statutory enactment in Arizona, where a board of officers consists of three or more, the majority of the board may meet and act; therefore the funding of these bonds was legal.

2. This act of funding the bonds was a mere ministerial act. When a *ministerial* power is conferred on a public board, only a majority of the board need meet and act. Therefore this act of funding was perfectly legal.

3. In cases where it is held that all the members of a public board must meet and then a majority may act, it is held sufficient if all the members are notified of the meeting, even though they do not attend; and where there is nothing of record to show that all were not notified, it will be presumed that all were notified. Therefore, in any event, this act of the two members of the board was legal.

The series of laws now under consideration began with the Act of the Arizona legislature of March 10, 1887 (appendix, page 34), called the Funding Act. This constituted the governor, auditor and secretary of the Territory the board of loan commissioners of the Territory. This Act was approved by the Act of Congress of June 25, 1890 (appendix, page 41), subject to future legislation by the Territory. This Act of Congress was subsequently added to by the Act of the Arizona legislature of March 19, 1891 (appendix, page 51).

It is clear from the provisions of these various acts that the board of loan commissioners was created by a Territorial statute, that the Act of Congress of June 25, 1890, was confirmatory of this

legislative act of the Territory, as to the creation of the board of loan commissioners, and in addition thereto, extended the powers of the board of loan commissioners, thus making the officers of the loan commission Territorial officers, confirmed by act of congress.

The legislature, by the Act of March 19, 1891, in construing this Act of Congress of June 25, 1890, construed the same to mean that they had authority to further legislate upon the same subject mentioned in the Act of Congress of June 25, 1890, and to this extent they extended the powers of the loan commission to fund outstanding bonds, warrants and indebtedness of counties, municipalities and school districts of the Territory, upon the application of the owners or holders thereof, and, while the Act of Congress of June 6, 1896, made no reference whatever to the Act of the legislature of the Territory of March 19, 1891, above referred to, nevertheless this court, in passing upon the authority of the loan commission to fund bonds and warrants of counties, municipalities and school districts, in the case of *Utter vs. Franklin*, 172 U. S. 417, held that the legislature had the right to extend the powers granted by Congress to the extent of authorizing the loan commission to fund bonds, warrants and other indebtedness of counties, municipalities and school districts upon the application of the holders thereof, clearly recognizing these officers to be Territorial officers in this sense. The loan commission, whether acting as purely Territorial officers or in the capacity of quasi federal officers, are, in either event, classified

as public officers and the Statutes of Arizona, so far as they relate to the powers and duties of public officers, should control. That by the Act of March 10, 1887, of the Arizona legislature, being R. S. of 1887, section 2932, subdivision 2, reads as follows: "All words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to the majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."

This statute, being passed by the same legislature and at the same time it constitutes the governor, secretary and auditor the board of loan commissioners, is equivalent to the legislature saying in the act creating the loan commissioners, that the majority of the board shall have full power and authority to act for the board. It is thus declared by the legislature to be the rule by which the authority of public officers shall be exercised, and is to be construed as the rule by which all statutes of Arizona creating public officers shall be construed. Following this rule of construction, then, the contention of the appellants must fail, as there is nothing in the law of the Territorial legislature or by the Act of Congress itself ratifying such laws of the Territory, requiring that all the members of the board of loan commissioners shall jointly exercise the authority conferred upon them. Therefore, under this rule of construction as prescribed by the Statutes of Arizona, the act of two members who did meet and who constituted a majority must be held to be perfectly legal.

The statute above mentioned, viz., subdivision 2 of section 2932, R. S. of 1887, has been construed in the case at bar by the supreme court of the Territory and by it held to be conclusive upon this proposition, and this court, we submit, should, in passing upon this particular question, follow the decision of the supreme court of the Territory to the same extent that the court follows the supreme court of a state upon the construction of a state statute.

This court has repeatedly held that it would follow the adjudications of the highest court of a state in the construction of its statutes, and that its interpretation would be accepted by this court as the true interpretation, whatever might be the opinion of this court as to its soundness.

Walker vs. State, Harbor Com., 17
Wall, 648.

Elmendorf vs. Taylor et al., 10 Wheaton
152.

Central Land Co. vs. Lindley, 159 U. S.
103.

But even if no such statutory rule of construction existed, appellants' contention would not be correct, as it is pointed out in our two propositions following:

2. The act of funding these bonds was a mere ministerial act. The board is given no discretion in the matter. When demand is made upon them they must fund the bonds. This is settled by the case of *Utter vs. Franklin*, 172 U. S. 417, where a mandamus was held to be proper to compel the board to fund such bonds. A mandamus is only

proper to compel the performance of a ministerial act. Therefore this court must have held that the duty of the loan commissioners in funding the bonds in question was purely ministerial.

Appellants insist that even a majority of the whole number of members of the board cannot act unless the other members are present and have the opportunity to exercise their influence in the deliberations.

In this case the influence of the third member of the board could have had no effect on the deliberations, as the act was a mere ministerial one and had to be performed by the board *nolens volens*. There is then no reason for applying the rule insisted on by appellants that all the members should be present, and the rule in such cases is "*cessat ratio cessat ipsa lex*." The rule stated by appellants has no application whatever to the performance of ministerial acts.

People vs. Walker, 23 Barb. 312.

In this case the court held that in the performance of a mere ministerial act a majority only of a board need meet, and said:

"The English authorities being clear on the subject as to what the common law is in such a case, and the dicta here opposed to each other, the weight of authority seems to be in favor of the English rule; that in public cases, *not of a judicial character*, a majority make a quorum, if the majority may decide. This best comports with the spirit and general tenor of our laws, and with our republican institutions."

3. There are cases which hold that all the

members of a public board must meet to perform an act (these cases were almost all, we believe, cases where the act was one of judicial character, as are the cases cited by appellants); but there is a further qualification of this rule that if all the members are notified of the meeting, then even though all do not attend, the majority may act.

George vs. School District 6, Metc. 497.

William vs. School District No. 1, 21

Pick 75.

Horton vs. Garrison, 23 Barb. 176.

Mechem on Public Officers states the rule similarly:

Sec. 572. "...all must be present to deliberate, or, *what is the same thing, must be duly notified.*"

If this were not true, then one member of a board could obstruct all business of it by refusing to attend. There can be no doubt of the correctness of the proposition.

Now in the present case, the record shows that only two of the three members of the board were present; *but there is nothing to show that the third member was not duly notified of the meeting.*

The law is that when the record does not show that the members of the board were not notified of the meeting, it will be presumed they were, as the presumption is in favor of regularity.

Am. and Eng. En. of Law, vol. 19, p. 466.

"And where an act is done by a majority of those to whom the power is confided, the presence and concurrence, *or notice to and refusal to act*, of the rest will be presumed until the contrary appears."

Meehem on Public Officers, sec. 573:

"It will be presumed in the absence of anything to the contrary that all met and deliberated or were duly notified."

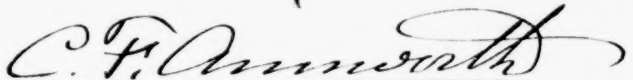
McCoy vs. Curtice, 9 Wend. 17, 24 Am.
Dec. 113.

Yates vs. Russell, 17 Johns 468.

These cases hold the law to be that regularity is to be presumed unless irregularity appears of record. To constitute the alleged irregularity two things are necessary: first that all the members should not be present, and second that notice should not have been given to all of them. It does appear of record that all the members were not present, but it does not appear that the absent member was not duly notified: therefore under the law it must be presumed that he was duly notified and that the meeting was regular and the acts done there are valid.

It is submitted then that, even if the Rev. Statute Sec. 2032 is not conclusive on the question and even if the distinction between ministerial and judicial acts is not well taken, the meeting of the board must be held to have been a perfectly valid and legal one.

We therefore respectfully submit that the judgment of the court below is correct and should be affirmed.



Attorney General of Arizona.

APPENDIX TO BRIEF.

I.

TERRITORIAL FUNDING ACT ENACTED BY
THE LEGISLATIVE ASSEMBLY OF THE
TERRITORY OF ARIZONA, APPROVED
MARCH 10, 1887.

[Revised Statutes of Arizona, 1887, p. 361.]

TITLE XXXI.

FUNDING.

Chapter One.

[Approved March 10, 1887.]

2039 (Sec. 1.) For the purpose of liquidating and providing for the payment of the outstanding and existing indebtedness of the Territory of Arizona, the governor of the said Territory, together with the Territorial auditor and Territorial secretary and their successors in office shall constitute a board of commissioners, to be styled the loan commissioners of the Territory of Arizona, and shall have and exercise the powers and perform the duties hereinafter provided.

2040 (Sec. 2.) It shall be, and is hereby, declared the duty of the loan commissioners to provide for the payment of the existing Territorial indebtedness due, and to become due, and for the purpose of paying, redeeming and refunding all or any part of the principal and interest, or either of the existing and subsisting Territorial legal indebtedness, and also that which

may at any time become due, the said commissioners shall, from time to time, issue negotiable coupon bonds of this Territory, when the same can be done at a lower rate of interest and to the profit and benefit of the Territory.

2041 (Sec. 3.) Said bonds shall be issued as near as practicable in denominations of one thousand dollars, but bonds of a lower denomination, not less than two hundred and fifty dollars, may be issued when necessary. Said bonds shall bear interest at a rate to be fixed by said loan commissioners, but in no case to exceed six and one-half ($6\frac{1}{2}$) per cent. per annum, which interest shall be paid in gold coin, or its equivalent in lawful money of the United States, on the fifteenth day of January in each year, at the office of the Territorial treasurer, or at such bank in the city of New York, in the State of New York, or in the city of San Francisco, in the State of California, as may be designated by said loan commissioners, at the option of the purchaser of said bonds, the place of payment being mentioned in said bonds. The principal of said bonds shall be made payable in lawful money of the United States within twenty-five years after the date of their issue.

They shall bear the date of their issue, state when, where and to whom payable, rate of interest and when and where payable, and shall be signed by said loan commissioners, and shall have the seal of the Territory affixed thereto, and countersigned by the Territorial treasurer, and bear his official seal, and shall be registered by the Territorial auditor in a book to be kept by him for that purpose, and the faith and credit of the Territory is hereby pledged for the payment of said bonds and the interest accruing thereon as herein provided.

2042 (Sec. 4). Coupons for the interest shall be

attached to each bond, so that they may be removed without injury or mutilation to bond.

They shall be consecutively numbered and bear the same number of the bond to which they are attached, and shall be signed by the Territorial treasurer.

The said coupons shall cover the interest expressed in said bond from the date of issue until paid; but in no case shall said bonds bear interest, nor shall any interest be paid thereon for any time before their delivery to the purchaser as hereinafter provided.

2043 (Sec. 5.) Whenever the said loan commissioners shall have decided to refund or redeem all or any part of the existing indebtedness of this Territory, they shall direct the Territorial treasurer to advertise for a sale of bonds to be issued for that purpose, by causing a notice of such sale to be published for the period of one month in some daily newspaper published at the capital of the Territory, and at least one insertion in a newspaper published in the city of New York, in the State of New York, and in the city of San Francisco, in the State of California: such notice shall specify the amount of bonds to be sold, the rate of interest they shall bear, the place, day and hour of sale, and that bids will be received by said treasurer for the purchase of said bonds within one month from the expiration of said publication: and at the place and time named in said notice, the said treasurer and loan commissioners shall open all bids received by him and shall award the purchase of said bonds, or any part thereof, to the highest bidder or bidders therefor: Provided, That said loan commissioners shall have the right to reject any and all bids: And Provided Further, That they may refuse to make any award unless suffi-

cient security shall be furnished by the bidder or bidders for the compliance with the terms of their bids.

2044 (Sec. 6.) When a sale of said bonds shall be awarded by the loan commissioners, they shall provide and procure the necessary bonds as in the act provided, and any expense incurred by them therefor, for the publication of said notices, costs of remitting funds for the payment of interest or money on said bonds, and all other necessary incidental expenses under the provisions of this act, shall be paid out of the general fund of said Territory, upon the order of the Territorial auditor, and a sum of money sufficient to cover said costs and expenses is hereby appropriated out of said fund.

They shall from time to time, after signing said bonds, deliver them to the Territorial treasurer, taking his receipt therefor, and charge him therewith. The said treasurer shall give to the Territory of Arizona an additional official bond, with two or more sureties, in a sum equal to the amount of bonds issued under this act, delivered to him by said loan commissioners, which bond shall be approved by the governor and deposited and filed with the secretary of the Territory and recorded by him in a book to be kept for that purpose. And the said treasurer shall stand charged upon his official bond for the faithful performance of the duties required of him under this act.

2045 (Sec. 7.) The Territorial treasurer shall sell said bonds for cash or exchange them for any of the Territorial indebtedness for the redemption of which they were so issued, but in no case shall said bonds be sold or exchanged for less than their face or par value and the accrued interest at the time of disposal, nor must any Territorial indebtedness be redeemed

at more than its face value and any interest that may be due thereon.

The said treasurer shall indorse, by writing or stamping in ink on the face of the paper evidencing the indebtedness received by him in exchange for said bonds, the time when and the amount for which exchanged.

2046 (Sec. 8.) All moneys received by said treasurer from a sale of said bonds shall be applied by him exclusively to the redemption of the Territorial indebtedness for the redemption of which such bonds were issued, and the treasurer shall give notice, as is provided by law in case of payment to redeem such indebtedness, and thereafter interest on all such indebtedness due and outstanding shall cease.

2047 (Sec. 9.) There shall be levied annually upon the taxable property in this Territory, and in addition to the levy for other authorized taxes a sufficient sum to pay the interest on all bonds issued and disposed of in pursuance of the provisions of this Act to be placed by the Territorial treasurer in a fund to be known as the "Interest Fund." And ten years after such bonds shall have been issued such additional amount shall be levied annually as will pay ten per cent. of the total amount issued until all the bonds issued under the provisions of this act are paid and discharged.

The Territorial board of equalization, if there be one, if not, then the Territorial auditor, shall determine the rate of tax to be levied in the different counties in the Territory to carry out the provisions of this act, and shall certify the same to the "board of supervisors" in each county; and the said board of supervisors are hereby directed and required to enter such rate on the assessment roll of their respective counties, in the same manner and with the same

effect as is provided by law in relation to other Territorial and county taxes. Every tax levied under the provisions or authority of this act is hereby made a lien against the property assessed, which lien shall attach on the first Monday in March in each year, and shall not be satisfied or removed until such tax has been paid.

All moneys derived from taxes authorized by the provisions of this act shall be paid into the Territorial treasury and shall be applied—

First—To the payment of the interest on the bonds issued hereunder.

Second—To the payment of the principal of such bonds: Provided, That all moneys remaining in the "interest fund" after the payment of the interest in each year, for the first ten years after the issuance of any bonds under this act, and all moneys remaining in the "redemption fund" after all said bonds shall have been paid and discharged shall be transferred by the Territorial treasurer to the Territorial general fund.

2048 (Sec. 10.) Whenever, after the expiration of the ten years from the date of issuance of any bonds under this act there remains after the payment of the interest, as provided in the preceding section, a surplus of ten thousand dollars or more, it shall be the duty of the Territorial treasurer to advertise as in the manner of the advertising by the loan commissioners for bids for sale of bonds, which advertisement shall state the amount of money in the said redemption fund, and the number of bonds, numbering them in the order of their issuance, commencing at the lowest number then outstanding, which such fund is set apart to pay and discharge; and if such bonds so numbered in such advertisements shall not be presented for payment and can-

cellation at the expiration of such publication, then such fund shall remain in the treasury to discharge such bonds whenever presented, but they shall draw no interest after the expiration of such publication. Before any such bonds shall be paid they shall be presented to the Territorial auditor, who shall indorse on each bond the amount due thereon, and shall write across the face of each bond the date of its surrender and the name of the person surrendering. The Territorial auditor shall keep a record of all bonds issued and disposed of by the Territorial treasurer, showing their number, rate of interest, date, and amount of sale, when, where, and to whom payable, and if exchanged, for what, and when presented for redemption, the date, amount due thereon, and person surrendering.

2049 (Sec. 11.) When the treasurer pays or redeems any Territorial indebtedness he shall indorse, by writing or stamping in ink, on the face of the paper evidencing such indebtedness so paid or redeemed, the words "redeemed and cancelled," with the date of cancellation. He shall keep a full and particular account and record of all his proceedings under this act and of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings under this act with his annual report, to be by the governor laid before the legislature at its meeting. All books and papers pertaining to the matter provided in this act shall at all times be open to the inspection of the party interested, or the governor, or a committee of either branch of the legislature, or a joint committee of both.

2050 (Sec. 12.) It shall be the duty of the Territorial treasurer to pay the interest on said bonds when the same falls due out of the said interest fund,

if sufficient; and if said fund be not sufficient, then to pay the deficiency out of the general fund: Provided, That the Territorial auditor shall first draw his warrant on the Territorial treasurer, payable to the order of said treasurer, for the amount of such deficiency, out of the general fund, which said interest warrant shall be drawn at least one month previous to the maturing of the interest.

2051 (Sec. 13.) It shall be the duty of said board of loan commissioners to make a full report of all their proceedings had under the provisions of this act to the governor on or before the first day of January of each year, and said reports shall be transmitted by the governor to the Territorial legislative assembly.

2052 (Sec. 14.) No bond issued under the provisions of this act shall be taxed within this Territory.

[Took effect immediately.]

II.

AN ACT OF CONGRESS APPROVED JUNE 25,
1890. — AN ACT APPROVING, WITH
AMENDMENTS, THE FUNDING ACT OF
ARIZONA (26 Stat. 175).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,

That the act of the Revised Statutes of Arizona of eighteen hundred and eighty-seven, known as "Title XXXI, Funding," be, and is hereby amended so as to read as follows, and that as amended the same is hereby approved and confirmed, subject to future Territorial legislation:

"TITLE XXXI.—FUNDING AND LOAN.

"Chapter One.

"Territorial, County, Municipal and School
District Indebtedness.

"Par. 2030 (Section 1.) For the purpose of liquidating and providing for the payment of the outstanding and existing indebtedness of the Territory of Arizona and such future indebtedness as may be or is now authorized by law, the governor of the said Territory, together with the Territorial auditor and the Territorial secretary and their successors in office, shall constitute a board of commissioners, to be styled the loan commissioners of the Territory of Arizona, and shall have and exercise the powers and perform the duties hereinafter provided.

"Par. 2040 (Sec. 2.) It shall be, and is hereby, declared the duty of the loan commissioners to provide for the payment of the existing Territorial indebtedness due, and to become due, or that is now, or may be hereafter, authorized by law and for the purpose of paying, redeeming, and refunding all or any part of the principal and interest, or either of the existing and subsisting Territorial legal indebtedness, and also that which may at any time become due or is now or may be hereafter authorized by law, the said commissioners shall, from time to time, issue negotiable coupon bonds of this Territory, when the same can be done at a lower rate of interest and to the profit and benefit of the Territory.

"Par. 2041 (Sec. 3). Said bonds shall be issued as near as practicable in denominations of one thousand dollars, but bonds of a lower denomination, not less than two hundred and fifty dollars, may be issued

when necessary. Said bonds shall bear interest at a rate to be fixed by said loan commissioners, but in no case to exceed five per centum per annum, which interest shall be paid in gold coin, or its equivalent in lawful money of the United States, on the fifteenth day of January in each year, at the office of the Territorial treasurer, or at such bank in the city of New York, in the State of New York, or in the city of San Francisco, in the State of California, or such place as may be designated by the said loan commissioners, at the option of the purchaser of said bonds, the place of payment being mentioned in said bonds. The principal of said bonds shall be made payable in lawful money of the United States fifty years after the date of their issue. Said Territory reserves the right to redeem at par any of said bonds, in their numerical order, at any time after twenty years after the date thereof.

"They shall bear the date of their issue, state when, where, and to whom payable, rate of interest, and when and where payable, and shall be signed by said loan commissioners, and countersigned by the Territorial treasurer, and bear his official seal, and shall be registered by the Territorial auditor in a book to be kept by him for the purpose, which shall state amount sold for, or, if exchanged, for what; and the faith and credit of the Territory is hereby pledged for the payment of said bonds and the interest accruing thereon, as herein provided.

"Par. 2042 (Sec. 4). Coupons for the interest shall be attached to each bond, so that they may be removed without injury to or mutilation of bond.

"They shall be consecutively numbered and bear the same number of the bond to which they are attached, and shall be signed by the Territorial treasurer.

"The said coupons shall cover the interest expressed in said bond from the date of issue until paid; but in no case shall bonds bear interest, nor shall any interest be paid thereon for any time before their delivery to the purchaser, as hereinafter provided.

"Par. 2043 (Sec. 5). Whenever the said loan commissioners may be authorized by law to issue bonds, or shall have decided to refund or redeem all or any part of the existing indebtedness of this Territory, they shall direct the Territorial treasurer to advertise for a sale of the bonds to be issued for that purpose, by causing a notice of such sale to be published for the period of one month in some daily newspaper published at the capital of the Territory, and at least one insertion in a newspaper published in the city of New York, in the State of New York, and in the city of San Francisco, in the State of California; such notice shall specify the amount of bonds to be sold, the place, day and hour of sale, and that bids will be received by said treasurer for the purchase of said bonds within one month from the expiration of said publication; and at the place and time named in said notice, the said treasurer and loan commissioners shall open all bids received by him and shall award the purchase of said bonds, or any part thereof to the bidder or bidders therefor bidding the lowest rate of interest: Provided, That said loan commissioners shall have the right to reject any and all bids: And Provided Further, That they may refuse to make any award unless sufficient security shall be furnished by the bidder or bidders for the compliance with the terms of their bids.

"Par. 2044 (Sec. 6). When the sale of said bonds shall be awarded by the loan commissioners, they shall provide and procure the necessary bonds as in this act provided, and any expense incurred by

them therefor, for the publication of said notices, costs of remitting funds for the payment of interest or money on said bonds, and all other necessary incidental expenses under the provisions of this act, shall be paid out of the general fund of said Territory, upon the order of the Territorial auditor, countersigned by the governor; and a sum of money sufficient to cover said costs and expenses is hereby appropriated out of said fund.

"They shall from time to time, after signing said bonds, deliver them to the Territorial treasurer, taking his receipt therefor, and charge him therewith. The said treasurer shall give to the Territory of Arizona an additional official bond, with two or more sureties, in a sum equal to the amount of bonds delivered to him by the said loan commissioners, which bond shall be approved by the governor and deposited and filed with the secretary of the Territory and recorded by him in a book to be kept for that purpose. And the said treasurer shall stand charged upon his official bond for the faithful performance of the duties required of him under this act.

"Par. 2045 (Sec. 7). The Territorial treasurer shall sell said bonds for cash or exchange them for any of the indebtedness for the redemption of which they were so issued, but in no case shall said bonds be sold or exchanged for less than their face or par value and the accrued interest at the time of disposal, nor must any indebtedness be redeemed at more than its face value and any interest that may be due thereon.

"That said treasurer shall endorse, by writing or stamping in ink on the face of the paper evidencing the indebtedness received by him in exchange for said bonds, the time when and the amount for which exchanged.

"Par. 2046 (Sec. 8). Moneys received by said treasurer shall be applied by him to the redemption of the indebtedness for the redemption of which bonds were issued, and the treasurer shall give notice, as is provided by law in case of payment and redemption of Territorial warrants of his readiness to redeem such indebtedness due and outstanding shall cease.

"Before any such indebtedness shall be paid the Territorial auditor shall indorse on each certificate the amount due thereon, and shall write across the face of each the date of its surrender and the name of the person surrendering, and shall keep proper record thereof.

"Par. 2047 (Sec. 9). There shall be levied annually upon the taxable property in this Territory, and in addition to the levy for other authorized taxes a sufficient sum to pay the interest on all bonds issued and disposed of in pursuance of the provisions of this act to be placed in the Territorial treasury in the fund to be known as the 'Interest Fund.' And fifty years after such bonds shall have been issued such additional amount shall be levied annually as will pay ten per cent of the total amount issued until all the bonds issued under the provisions of this act are paid and discharged; nothing herein contained shall be construed to prevent the legislature of Arizona from creating a sinking fund during the life of said bonds for their redemption at maturity.

"The Territorial board of equalization, or, on their failure, the Territorial auditor, shall determine the rate of tax to be levied in the different counties in the Territory to carry out the provisions of this act, and shall certify the same to the 'board of supervisors' in each county and to the municipal or school authorities; and the said board of supervisors or au-

thorities are hereby directed and required to enter such rate on their assessment rolls in the same manner and with the same effect as is provided by law in relation to other Territorial, county, municipal and school taxes. Every tax levied under the provisions of authority of this act is hereby made a lien against the property assessed, which lien shall attach on the first Monday in March in each year, and shall not be satisfied or removed until such tax has been paid.

"All moneys derived from taxes authorized by provisions of this act shall be paid into the Territorial treasury and shall be applied—

"First. To the payment of the interest on the bonds issued hereunder.

"Second. To the payment of the principal of such bonds: Provided, That all moneys remaining in the interest fund after the payment of the interest and all moneys remaining in the 'redemption fund' after all said bonds shall have been paid and discharged shall be transferred by the Territorial treasurer to the Territorial 'general fund.'

"Par. 2048 (Sec. 10). Whenever, after the expiration of the fifty years from the date of issuance of any bonds under this act there remains after the payment of the interest, as provided in the preceding section, a surplus of ten thousand dollars or more, it shall be the duty of the Territorial treasurer to advertise as in the manner of advertising by the loan commissioners for bids for sale of bonds, which advertisement shall state the amount of money in the said redemption fund, and the number of bonds, numbering them in the order of their issuance, commencing at the lowest number then outstanding, which such fund is set apart to pay and discharge; and if such bonds so numbered in such advertisement shall not be presented for payment and cancellation

at the expiration of such publication, then such fund shall remain in the treasury to discharge such bonds whenever presented, but they shall draw no interest after the expiration of such publication. Before any such bonds shall be paid they shall be presented to the Territorial auditor, who shall indorse on each bond the amount due thereon, and shall write across the face of each bond the date of its surrender and the name of the person surrendering. The Territorial auditor shall keep a record of all bonds issued and disposed of by the Territorial treasurer, showing their number, rate of interest, date, and amount of sale, when, where, and to whom payable, and if exchanged, for what, and when presented for redemption, the date, amount due thereon, and person surrendering.

"The boards of supervisors of the counties, the municipal and school authorities, are hereby authorized and directed to report to the loan commissioners of the Territory their bonded and outstanding indebtedness, and said loan commissioners may, on written demand, require an official report from the board of supervisors of counties, the municipal or school authorities, of their bonded and outstanding indebtedness, and said loan commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness, upon the official demand of said authorities, in the same manner as other Territorial indebtedness, and they shall issue bonds for any indebtedness now allowed, or that may be hereafter allowed by law to said county, municipality or school district, upon official demand by said authorities; the county, municipality or school district to pay into the Territorial treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the Territorial board

of equalization, or on their failure by the Territorial auditor to be levied for the payment of the principal of the bonds issued in redemption, refunding or other bonds issued to such county, municipality or school district when the same shall become due and in addition a rate of interest paid by the Territory on such bonds.

"Par. 2049 (Sec. 11). When the treasurer pays or redeems any indebtedness he shall indorse, by writing or stamping in ink, on the face of the paper evidencing such indebtedness so paid or redeemed, the words 'redeemed and cancelled,' with the date of cancellation. He shall keep a full and particular account and record of all his proceedings under the act and of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings under this act with his annual report, to be by the governor laid before the legislature at its meeting. All books and papers pertaining to the matter provided in this act shall at all times be open to the inspection of the party interested, or to the governor, or a committee of either branch of the legislature, or a joint committee of both.

"Par. 2050 (Sec. 12). It shall be the duty of the Territorial treasurer to pay the interest on said bonds when the same falls due out of the said interest fund, if sufficient; and if said fund be not sufficient, then to pay the deficiency out of the general fund: Provided, That the Territorial auditor shall first draw his warrant on the Territorial treasurer, payable to the order of said treasurer, for the amount of such deficiency, out of the general fund.

"Par. 2051 (Sec. 13). It shall be the duty of said loan commissioners to make a full report of all their proceedings had under the provisions of this

act to the governor on or before the first day of January of each year, and said reports shall be transmitted by the governor to the Territorial legislative assembly.

"Par. 2052 (Sec. 14). No bond issued under the provisions of this act shall be taxed within this Territory.

"Sec. 15. That nothing in this act shall be construed to authorize any future increase of any indebtedness in excess of the limit prescribed by the 'Harrison act': Provided, however, That the present existing and outstanding indebtedness, together with such warrants as may be issued for the necessary and current expenses of carrying on Territorial, county, municipal and school government for the year ending December thirty-first, eighteen hundred and ninety, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the 'Harrison act.'

"That all acts or parts of acts in conflict with this act are hereby repealed."

Approved June 25, 1890.

III.

TERRITORIAL FUNDING ACT OF ARIZONA,

APPROVED MARCH 19, 1891.

AN ACT TO PROVIDE FOR FUNDING TERRITORIAL, COUNTY AND OTHER INDEBTEDNESS AND BEING SUPPLEMENTAL TO THE ACT OF CONGRESS ENTITLED "AN ACT APPROVING WITH AMENDMENTS THE FUNDING ACT OF ARIZONA," APPROVED JUNE 25, 1890.

[Laws Territory of Arizona, 1891, p. 120.]

Be it enacted by the Legislative Assembly of the Territory of Arizona.

Section 1. That the act of congress entitled "An Act Approving with Amendments the Funding Act of Arizona," approved June 25th, 1890, be, and the same is hereby, now re-enacted as of the date of its approval, subject to the modifications and additional provisions hereinafter set out, and to carry out the purpose and intention of said act of congress, the loan commissioners of the Territory of Arizona shall provide for the liquidation, funding and payment of the indebtedness existing and outstanding on the 31st day of December, 1890, of the Territory, the counties, municipalities and school districts within said Territory, by the issuance of bonds of said Territory, as authorized by said act, and all bonds issued under the provisions of this act and the interest thereon shall be payable in gold coin of the United States.

Sec. 2. Whenever the said loan commissioners

shall redeem, refund or pay any indebtedness of a county, municipality or school district, or issue bonds to such county, municipality or school district as authorized by said act of congress, the Territorial treasurer shall open and keep an account with said county, municipality or school district, and shall at once make out and transmit to the proper officer or officers charged with the administration of the affairs of said county, municipality or school district, a statement under his official seal, showing the amount and character of the indebtedness of said county, municipality or school district, refunded or paid, the amount of bonds issued therefor, when due and payable, rate of interest and amount of interest that will be required to be paid annually thereon. And said officer or officers shall file said statement in the proper office as a record therein.

Sec. 3. In all cases of funding and paying the indebtedness of any county or school district in such county, the board of supervisors of such county, or, of funding and paying the indebtedness of any municipality, the executive or other proper officer or officers of such municipality, shall annually, at the time of assessing and levying taxes therein, cause to be assessed and levied each year upon the taxable property of the county in case of county indebtedness, municipality in case of municipal indebtedness, and school district in case of school district indebtedness, and in addition to other authorized taxes, a sufficient sum to pay the interest on the bonds issued and disposed of under the provisions of this act, for the benefit of such county, municipality or school district respectively. And fifty (50) years after such bonds shall have been issued, such additional amount shall be levied, annually, as will pay ten per cent of the total amount issued until all the bonds issued

under the provisions of this act are paid. And all taxes shall be assessed, levied and collected as other county, municipal and school district taxes are collected, and shall be paid into the Territorial treasury.

Sec. 4. If sufficient money shall not be realized each year from the collection of taxes to pay the interest on said bonds when due, the deficiency shall be paid out of the money, fund or funds, used for defraying the general expenses of such county, municipality or school district, for the funding, redemption and payment of whose indebtedness said bonds were issued, which said deficiency shall be paid by the proper officer or officers in charge of said money, fund or funds, upon the official demand thereof by the Territorial treasurer. All money collected in any county, municipality or school district, for the payment of said interest remaining after such payment, shall be paid into said fund or funds used for the general expenses of such county, municipality or school district.

Sec. 5. It shall be the duty of the respective county, municipality and school district officers, whose duty it is to levy and collect the taxes therein, to levy and collect the tax in this act provided for the payment of the principal and interest of said bonds when due and payable and to pay the same into the Territorial treasury at the time and times of the payment of the Territorial taxes. Any failure to comply with the conditions and provisions of this act by any officer or officers charged with the performance thereof, or any neglect or refusal by him or them to levy, collect or pay over such taxes as aforesaid, or to apply the money collected under this act otherwise than for the purpose for which it was collected, shall be deemed a misdemeanor, and upon conviction in a court having jurisdiction thereof, the person so con-

victed shall be fined in an amount equal to the sum that should have been levied and collected, or for any misappropriation of the moneys so collected, in an equal amount to the sum not applied as in this act provided, and imprisoned as in other cases of misdemeanor, in the discretion of the court. And if the said proper officer or officers shall fail to levy the taxes as in this act provided, he or they may be compelled to perform such duty by any court having jurisdiction thereof. Provided, that in such case of failure, the Territorial board of equalization, or, upon their failure to act, the Territorial auditor shall levy sufficient taxes in the different counties, municipalities and school districts to carry out the provisions of this act and the act of which this is supplemental. Said board and auditor, or either of them, may require the proper officer or officers of the county, municipality or school district whose indebtedness has been refunded, and it shall be their duty to furnish said board or auditor such information as will enable said board or auditor to carry out the provisions of this act and said act of congress. When the tax is so levied by the Territorial board of equalization or Territorial auditor, he or they shall transmit to the board of supervisors, in the case of the county and school district tax, and to the proper officers in case of municipal tax, or to such other officer or officers exercising like duties, a statement of the rate of taxes fixed and levied upon the property within said county, municipality or school district, for the purpose aforesaid, and the proper county, municipal and school district officers shall enter upon the tax roll and proceed to collect the tax levied, as other county, municipal and school district taxes are collected.

Sec. 6. The board of supervisors of each

county shall fix and define the boundaries of each school district within the county, and all taxable property and the increase thereof, within the limits of each county, municipality or school district, is hereby pledged to the payment of any and all bonds and the interest thereon issued for the benefit of such county, municipality or school district respectively. And in the event of the division, disincorporation or dissolution in any manner in any such county, municipality or school district, the board of supervisors of each county, or other board of officers exercising the like duties, and in case of their failure to act, then the Territorial board of equalization, and upon their failure to act the Territorial auditor or other officer exercising the like duties, shall cause the proper taxes to be assessed and levied upon the taxable property within the limits of such county, municipality or school district, at and from the time of the issuance of the bonds for its benefit, to meet the payment of such bonds and the interest thereon.

Sec. 7. Any person holding bonds, warrants or other evidences of indebtedness of the Territory or any county, municipality or school district within the Territory, existing and outstanding on the 31st day of December, 1890, may exchange the same for the bonds issued under the provisions of this act at not less than their face or par value and the accrued interest at the time of exchange; but no indebtedness shall be redeemed at more than its face value and any interest that may be due thereon.

Sec. 8. The provisions of said act of congress relating or applying to the liquidation, refunding and redeeming of the Territorial indebtedness, sale or exchange of bonds, receiving and applying the proceeds; shall apply and be the method used for the liquidation, refunding and redeeming the payment of

the indebtedness of the counties, municipalities and school districts of this Territory authorized and contemplated by said act. And the loan commissioners shall, at no time, issue to any county, municipality or school districts any bonds created under this act or said act of congress, without requiring from the officer or officers receiving the same, a bond, as is required of the Territorial treasurer, by section 6 of said act of congress; and the said officer or officers shall give such bond, and no bonds shall be issued to any county, municipality or school district except in exchange for the bonds, warrants or other evidences of indebtedness for the redemption of which the refunding bonds were issued.

Sec. 9. Each county, municipality and school district shall pay into the Territorial treasury its pro rata of the costs and expenses incurred and paid by the Territory for the refunding, redeeming and payment of the indebtedness of said county, municipality or school district.

Sec. 10. This act shall take effect and be in force from and after its passage.

Approved March 19, 1891.

IV.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An Act approving, with amendments, the funding Act of Arizona," approved June twenty-fifth, eighteen hundred and ninety, and paragraph twenty hundred and fifty-two (section fifteen), of said act, be, and the same is hereby, amended by adding thereto as follows:

"Provided further, however, That the present outstanding warrants, certificates and other evidences of indebtedness issued subsequent to December thirty-first, eighteen hundred and ninety, for the necessary and current expenses of carrying on the Territorial government only, together with such warrants as may be issued for such purpose for the years ending December thirty-first, eighteen hundred and ninety-four, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the 'Harrison Act.'"

Sec. 2. That all acts or parts of acts in conflict with this act are hereby repealed.

Approved August 3, 1894.

V.

MEMORIAL.

To the Senate and House of Representatives of the United States of America in Congress assembled:

Your Memorialists, the Legislative Assembly of the Territory of Arizona, beg leave to submit to your honorable bodies; that

Whereas, Under the various acts of the legislative assembly of the Territory of Arizona, certain of the counties of the Territory were authorized to issue in aid of railroads and other quasi-public improvements, and did, under such acts, issue bonds, which said bonds were sold in open market, in most instances at their face value, and are now held at

home and abroad by persons who, in good faith, invested their money in the same, and, save and except such knowledge as the law imputes to the holder of bonds issued under authorized acts, are innocent holders of the same; and

Whereas, The validity of these bonds for many years after their issuance was questioned and acknowledged by the payment of the interest thereon as it fell due: and

Whereas, There has recently been raised a question as to whether these acts of the legislative assembly were valid under the organic law of the Territory, and which has led to a movement looking to the repudiation of the indebtedness created under and by virtue of said acts, and

Whereas, We believe that such repudiation would, under the circumstances, work great wrong and hardship to the holders of such bonds, and at the same time most seriously affect the credit and standing of our people for honesty and fair dealing, and bring us into disrepute:

Wherefore, We most strongly urge upon your most honorable bodies the propriety and justice of passing such curative and remedial legislation as will protect the holders of all bonds issued under authority of acts of the legislative assembly, the validity of which has heretofore been acknowledged, and that you so further legislate as to protect all innocent parties having entered into contracts resulting from inducements offered by our Territorial legislation, and relieve the people of the Territory from the disastrous effects that must necessarily follow any repudiation of good faith on the part of the Territory; and that you may so further legislate as to validate all acts of the legislative assembly of the Territory which have held out inducements for the

investment of capital within the Territory, and which have led to the investment of large sums of money in enterprises directly contributing to the development and growth of the Territory, and thus relieve the honest people of the Territory from the disastrous effects that must necessarily follow any violation of good faith on the part of our people.

Resolved, That our delegate to congress be, and he is hereby, instructed to use all honorable means to bring this subject to the earnest consideration of congress; that the secretary of the Territory be, and he is hereby requested to transmit a copy of the foregoing Memorial to each house of congress, and to our delegate in congress.

J. H. CARPENTER,

Speaker of the House.

A. J. DORAN,

President of the Council.